

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

JOSE A. CÓRDOVA-MEDINA, et al.,

Plaintiffs,

Civil No. 07-1766 (JAF)

V.

FIRSTBANK PUERTO RICO,

Defendant.

O R D E R

On August 23, 2007, Plaintiffs Fidel Alonso-Valls, his wife Barbara Vilá, and their conjugal partnership brought this action against Defendant FirstBank Puerto Rico for violations of the Bank Holding Company Act ("BHCA"), 12 U.S.C. §§ 1971-78, and Puerto Rico law. Docket Nos. 1, 4. On June 20, 2008, we dismissed Plaintiffs' BHCA claims as barred by the statute of limitations. Docket No. 69. Plaintiffs moved for reconsideration on July 3, 2009. Docket No. 73. Defendant opposed on July 8, 2008. Docket No. 74.

Pursuant to Federal Rule of Civil Procedure 59(e), we entertain motions for reconsideration to (1) correct manifest errors of law or fact, (2) consider newly discovered evidence, (3) incorporate an intervening change in the law, or (4) otherwise prevent manifest injustice. See Marie v. Allied Home Mortgage Corp., 402 F.3d 1, 7 n.2 (1st Cir. 2005) (citing 11 Charles Allen Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 2810.1 (2d ed. 1995)); see also Dr. Jose S. Belaval, Inc. v. Pérez-Perdomo, 465 F.3d 33, 37 n.4 (1st Cir. 2006); Aybar v. Crispin-Reyes, 118 F.3d 10, 16 (1st Cir. 1997); FDIC v. World Univ., Inc., 978 F.2d 10, 16 (1st Cir.

Civil No. 07-1766 (JAF)

-2-

1 1992). Plaintiffs have made no showing, nor do we find, that any of
2 these circumstances are present here.

3 In our previous Opinion and Order, we found that Plaintiffs had
4 failed to allege sufficiently that Defendant had fraudulently
5 concealed a BHCA violation. Docket No. 69. Instead, we found that
6 Plaintiffs could have known of the alleged violation on the date they
7 signed the disputed loan documents and, as a result, their BHCA claim
8 was untimely. Id.

9 Plaintiffs assert that we neglected to consider an "Amended
10 Answer to Complaint and Sworn Counterclaim," (the "Sworn
11 Counterclaim") filed by Plaintiffs in the related case currently
12 pending in Puerto Rico court. Docket No. 73 (citing Docket Nos. 67-2,
13 71-2). Plaintiffs argue that this document generates an issue of fact
14 as to whether Defendant fraudulently concealed its intent to enforce
15 the allegedly illegal loan terms. Id.

16 The Sworn Counterclaim, however, does not present any facts not
17 alleged in Plaintiffs' amended complaint, which we considered in
18 deciding the motion to dismiss. See Docket No. 69 (citing Docket
19 No. 4); Docket No. 71-2. Plaintiffs alleged in their complaint that
20 Defendant had violated the BHCA by requiring Plaintiffs to grant them
21 an unconditional stock option in Plaintiffs' company in exchange for
22 credit. Docket No. 4. Plaintiffs claimed that Defendant had done so
23 by secretly replacing a document requiring the option as collateral
24 on the loan with one making the option unconditional on the date of
25 signing. Id. Nothing in the Sworn Counterclaim changes the fact that

Civil No. 07-1766 (JAF)

-3-

1 Plaintiffs had the loan documents with the allegedly illegal terms in
2 their possession from the date of signing. See Docket No. 71-2. Had
3 Plaintiffs exercised diligence at any time in the following four
4 years, they would have discovered the supposed violation within the
5 statute of limitations. Because they did not do so, their BHCA action
6 is regrettably time-barred. See Salois v. Dime Sav. Bank, FSB, 128
7 F.3d 20, 26 (1st Cir. 1997).

8 Accordingly, we **DENY** Plaintiffs' motion for reconsideration,
9 Docket No. 73.

10 **IT IS SO ORDERED.**

11 San Juan, Puerto Rico, this 2nd day of March, 2009.

12 S/José Antonio Fusté
13 JOSE ANTONIO FUSTE
14 U.S. District Judge